IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 893 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

NAVINBHAI SOMABHAI PATEL

Appearance:

MR BD DESAI, APP for the appellant

MR DD VYAS for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The acquittal of the respondent of the offences punishable under section 161 of the Indian Penal Code and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act recorded by the learned Special Judge, Surat vide judgment dated August 10, 1988, rendered in Special Case No.5/87, is subject matter of challenge in the present appeal, which is filed under section 378 of the Code of Criminal Procedure.

2. In November, 1985, complainant Pravinkumar V.Sonavia had erected a cabin at Kamrej Cross Roads and was running a book stall in the name and style of 'Sagar Book Stall'. According to him, a Clerk named Navinbhai Somabhai (the respondent) of Irrigation Department had made inquiries about legality or otherwise of erection of cabin at the cross roads and threatened the complainant with eviction, as according to the said Clerk, the complainant had encroached upon land belonging to Irrigation Department. The case of the complainant is that he had told the clerk that others had also placed their cabins nearby, but the clerk i.e. the respondent had told the complainant that it was not his lookout whether cabins of others were situated nearby or not and for doing business, he would have to pay Rs. 100/- to him. The case of the complainant is that he had expressed his inability to pay the sum demanded by the respondent and, therefore, the respondent had left the place in disgust. According to the complainant, again the respondent had visited his cabin on November 6, 1985 in the morning and had demanded illegal gratification and on insistence of the complainant to reduce the amount, the respondent had agreed to accept Rs.80/- as illegal gratification. According to the complainant, he had informed the respondent to come to the cabin at about 4 to 5 p.m. and the respondent had told the complainant that he would come to the cabin in the evening. The complainant was of the opinion that it was not proper to pay the amount of illegal gratification demanded by the respondent and, therefore, he had contacted Police Inspector, Anti Corruption Bureau,Surat, who had recorded his complaint at about 11.00 A.M.. After recording of the complaint, two panch witnesses were summoned and at the instance of the Police Inspector, the complainant had read over complaint to the panch witnesses. Thereafter the complainant had produced three currency notes i.e. one of Rs. 50/- denomination, another note of Rs. 20/denomination and 3rd one of Rs. 10/- denomination. On instructions of Police Inspector,A.C.B., Police Sub Inspector Mr. Merujay had conducted experiment of anthracene powder with the help of ultra violet lamp and

Mr. Merujay had placed currency notes smeared with anthracene powder in left side bush-shirt pocket of the complainant. The complainant was specifically instructed by Police Inspector, A.C.B. not to touch the currency notes till the demand of illegal gratification was made by the respondent and to hand over the currency notes to the respondent on demand being made. The complainant was also instructed to give necessary signal to the members of raiding party on acceptance of illegal gratification by the respondent. After giving of necessary instructions to the complainant, first part of the panchnama was concluded at the A.C.B. office and the complainant in the company of panch no.1 as well as other members of raiding party, had proceeded towards the cabin of the complainant. The complainant in the company of panch no.1 had reached his cabin at about 4.45 P.M. and the respondent had come to the cabin at about 5.30 P.M. The case of the prosecution is that after making some inquiries about Dipavali cards, the respondent had seen at the complainant and, therefore, the complainant had handed over the currency notes to the respondent, who had accepted the same in his right hand. The prosecution claims that on necessary signal being given, members of raiding party had rushed at the place and on seeing the Police Inspector, A.C.B., the respondent had become scared and had thrown the currency notes from his hand which had fallen on three magazines kept in the cabin. After carrying out test with ultra violet lamp at the cabin itself and on noticing anthracene powder on the right hand of the respondent, the members of the raiding party had gone to Kathor Guest House where second part of panchnama was concluded. Further investigation into the case was made by Mr. C.A.Mahendrakar, Police Inspector, A.C.B. who at the conclusion of investigation had chargesheeted the respondent of the offences punishable under section 161 of I.P.C. and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act. The charge was framed against the respondent for the offences punishable under section 161 I.P.C. and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act. The charge was read over and explained to the respondent, who pleaded not guilty to the same and claimed to be tried. Therefore, in all three witnesses were examined by the prosecution i.e. (1) complainant Pravinkumar V. Sonaviya as P.W.1 at Exh.5, (2) Panch no.1-Mohanbhai T.Gamit as P.W.2 at Exh.6, and (3) Mr. C.A.Mahendrakar, P.I. ACB as P.W.3 at Exh.8. The prosecution also produced documentary evidence such as panchnama mentioning contemporary facts at exh.7, complaint lodged by Pravinkumar at exh.9 and sanction to prosecute the respondent at exh.10, to prove its case

against the respondent. After recording of evidence of prosecution witnesses was over, statement of the respondent was recorded by the learned Judge as required by section 313 of the Code. In his further statement, the respondent claimed that the prosecution case against him was totally false, but did not examine any witness in support of his defence.

3. On appreciation of evidence adduced by the prosecution, the learned Judge has acquitted the respondent by judgment dated August 10, 1988 holding that the prosecution has failed to prove its case against the respondent. This judgment has given rise to the present appeal.

4. Mr. B.D.Desai, learned A.P.P. after taking us through the entire evidence on record, submitted that the demand of illegal gratification made by the respondent is amply proved by the evidence of the complainant, which is corroborated by his complaint and, therefore, the case of demand of illegal gratification by the respondent ought to have been believed by the learned Special Judge. According to the learned counsel, demand and acceptance of illegal gratification by the respondent is proved not only by reliable evidence of the complainant, but also by the evidence of independent panch witness, namely, Mohanbhai whose evidence gets corroboration from the contemporary document, namely, panchnama as also the evidence of Police Inspector Mr. Mahendrakar and, therefore, the respondent ought to have been convicted under section 161 I.P.C. and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act. What was claimed was that the evidence led by the prosecution has been misread by the learned Special Judge and, therefore, acquittal appeal should be accepted.

5. Mr. D.D.Vyas, learned counsel for the respondent pleaded that in view of the distance between the cabin of the complainant and the A.C.B. Office, Surat as well as time at which the complaint is alleged to have been recorded at A.C.B. office, demand of illegal gratification on November 6, 1985 in the morning becomes doubtful and, therefore, the learned Judge was justified in disbelieving the case of the prosecution regarding demand of illegal gratification on November 6, 1985 in the morning. The learned counsel extensively referred to the evidence of the complainant, panch witness no.1 as well as that of Police Inspector, ACB and urged that demand of illegal gratification at the cabin of the complainant is not proved by the prosecution and, therefore, case of acceptance of illegal gratification

itself becomes doubtful. What was claimed by the learned counsel for the respondent was that when the police officer had reached the cabin of the complainant after the signal was given by the complainant, he had found that currency notes were lying on the magazines kept in the cabin and as Police Inspector has not stated a word about the prosecution case that on seeing the members of raiding party the respondent had thrown away the currency notes, the appeal should not be accepted. The learned counsel stressed that this is an acquittal appeal and, therefore, even if second view is possible, the view taken by the learned Special Judge being reasonable and probable, the appeal should be dismissed.

6. We have heard the learned counsel for the parties and taken into consideration the evidence on record. From the evidence of the complainant, it is evident that according to him, the respondent had come to the cabin at 10.30 A.M. on November 6, 1985 and demanded illegal gratification. The complainant has clearly stated that he had gone to the office of A.C.B. Surat and lodged complaint at about 11.00 A.M. on that day. Police Inspector Mr. Mahendrakar has also stated in his evidence that the complainant had come to A.C.B. office where his complaint was reduced into writing at about 11.00 A.M. From the evidence of P.I. Mr.Mahendrakar it transpires that the distance between the cabin of the complainant and A.C.B. office is about 23 K.Ms. and admittedly, the complainant had no vehicle of his own, which could have been used for the purpose of going to A.C.B. office. As admitted by the complainant, he had taken lift on vehicle of someone passing on the road for the purpose of going to A.C.B. office. Police Inspector Mr.Mahendrakar has maintained in his evidence that road from the cabin of the complainant to A.C.B. office,Surat is highly congested and badly maintained. Under the circumstances, it becomes doubtful whether the complainant could have gone to the office of A.C.B. Surat within 30 minutes as claimed by him after demand of illegal gratification was made by the respondent at 10.30 A.M. in the morning. Thus, initial demand having been not proved beyond reasonable doubt, the whole case becomes suspicious. Further the case of the complainant that the respondent had agreed to accept the amount of illegal gratification in the evening also becomes doubtful because initial demand itself is not proved beyond reasonable doubt. The record does not indicate that the place where cabin was erected by the complainant belongs to Irrigation Department. As admitted by the complainant, the complainant was paying rent to Gram Panchayat. Nothing has been produced on record of the

case to indicate that any action was sought to be taken against the complainant by Irrigation Department with respect to his occupation of the cabin. Therefore, there is no manner of doubt that the respondent was incapable of showing any favour or render any service in connection with his official duties to the complainant. It is true that, in law, incapacity of a government servant to show any favour or render any service in connection with his official duties does not necessarily take the case out of the mischief of penal provision made in the Prevention of Anti Corruption Act. Nevertheless, it is an important factor bearing on the question as to whether the accused had received the gratification as a motive or reward for doing or forbearing to do any official act or for showing any favour or disfavour in exercise of his official functions. So far as acceptance of amount is concerned, the complainant has not stated in his evidence that the amount of illegal gratification was demanded by the respondent. What he has stated in his evidence is that the respondent had made inquiries about some Dipavali cards lying in the cabin of the complainant. Panch no.1 initially maintained before the Court that after referring to earlier talk pertaining to demand of illegal gratification made by the respondent, the complainant had handed over currency notes which were accepted by the respondent, but panch no.1 in para-16 of his deposition clearly admitted that at the cabin, no demand of illegal gratification was made by the respondent. The investigating officer also does not refer to any demand of illegal gratification by the respondent at the cabin. Thus, demand of illegal gratification before the so-called acceptance of bribe money is not proved by the prosecution. The evidence of the complainant makes it manifest that after making the experiment with ultra violet lamp at the cabin, the members of raiding party had gone to Kathor Guest House where panchnama was prepared and during that time he was not present. This is so stated by the complainant in Para-15 of his deposition. From this evidence it becomes clear that the contemporary record viz. panchnama was not prepared at the place where the respondent had allegedly accepted the bribe amount. This casts a serious doubt on the whole prosecution case. Further the evidence of the complainant and Panch no.1 that the respondent had accepted the amount with his right hand also becomes doubtful because on experiment of ultra violet lamp, no marks of antracene powder were found either on the palm or fingers of right hand of the respondent, but marks of anthracene powder were found on the tips of fingers of the respondent. The evidence of Police Inspector makes it manifest that when he had rushed to the cabin of the

complainant on receiving signal from the complainant, the currency notes were lying in the cabin. Thus, he has not supported the prosecution case that on seeing the members of raiding party, the respondent had thrown away the currency notes which he had accepted from the complainant. On overall appreciation of evidence, we are satisfied that the learned Judge did not commit any error in disbelieving the prosecution case and acquitting the respondent. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and anothers, A.I.R. 1981 S.C. 1417. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. The appeal, therefore, cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions contained in the impugned judgment.

(J.M.Panchal,J.)

(S.D.Dave, J.)

(patel)